

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD HEYRICH, ON BEHALF OF
HIMSELF, AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

GLOBAL CALLCENTER SOLUTIONS, INC.,

Defendant.

NO.

NOTICE OF REMOVAL

Defendant Global Callcenter Solutions, Inc. ("GCS"), by counsel, hereby removes the instant case, served but not yet filed with the Superior Court of the State of Washington for King County, to the United States District Court for the Western District of Washington, Seattle Division. Removal is based on 28 U.S.C. § 1331 (federal question jurisdiction). As grounds for removal, GCS states the following:

1. Plaintiff Donald Heyrich, on behalf of himself and all others similarly situated, ("Plaintiff") served the Summons and Complaint upon GCS on October 11, 2012 via private process server. To date, the Complaint has not been filed with the Superior Court of the State of Washington for King County.

NOTICE OF REMOVAL - 1

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1 2. The Complaint alleges violations of 47 U.S.C. § 227, the Telephone Consumer
2 Protection Act of 1991, as amended (“TCPA”).

3 3. The Complaint also alleges that it meets the requirements for a class action
4 under Washington State Superior Court Civil Rule 23.

5 4. Removal to this Court is proper. Pursuant to 28 U.S.C. §§ 1446 and 1441, this
6 Notice of Removal is being filed in the United States District Court for the Western District of
7 Washington, Seattle Division, which is the federal district court embracing the state court
8 where the State Action is to be filed.

9
10 5. Removal is timely. The Summons and Complaint were served on October 11,
11 2012 via private process server. Receipt of the Summons and Complaint was the first notice of
12 the lawsuit received by GCS. This Notice of Removal is being filed within (30) days after
13 receipt by GCS of the Summons and Complaint. See 28 U.S.C. § 1446(b).

14
15 6. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure
16 11. See 28 U.S.C. § 1446(a).

17 7. All other procedural requirements have been met.

18 a. Attached hereto as **Attachment A** is a copy of all process, pleadings and
19 orders served upon GCS in the state court action to date, namely, the Summons and Complaint.
20 See 28 U.S.C. § 1446(a).

21 b. Attached hereto as **Attachment B** is a copy of the Notice of Filing of
22 Notice of Removal that GCS promptly will attempt to file with the Civil Clerk of the Superior
23 Court of the State of Washington for King County, and promptly will serve upon the Plaintiff.
24 GCS has been served with the complaint, but has reason to believe that the cause of action has
25

NOTICE OF REMOVAL - 2

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1 not yet been filed with King County Superior Court, and no cause number has been assigned.
2 Therefore, GCS believes the filing of the Notice of Filing of Removal will not be accepted by
3 King County Superior Court. See supporting Declaration of William I. Aloe, filing in
4 conjunction with this document.

5 8. Removal is warranted pursuant to 28 U.S.C. § 1331, which confers jurisdiction
6 to federal district courts over all civil actions arising under the Constitution, laws, or treaties of
7 the United States.

8 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the
9 action against GCS is based upon federal questions arising under the TCPA.
10

11 **WHEREFORE**, this action should proceed in the United States District Court for the
12 Western District of Washington, Seattle Division, as an action properly removed thereto.
13

14 DATED this 9th day of November, 2012.
15

16 s/William I. Aloe, WSBA #40906
17 Randy J. Aliment, WSBA #11440
18 William I. Aloe, WSBA #40906
19 Michael I. White, WSBA #35409
20 Attorneys for Defendant
21 WILLIAMS, KASTNER & GIBBS PLLC
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24 Telephone: (206) 628-6600
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mwhite@williamskastner.com

CERTIFICATE OF SERVICE

I, William I. Aloe, say:

On November 9, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants.

Additionally, a copy of the foregoing has been sent out via electronic mail, via facsimile, via regular U.S. Mail, and via Legal Messenger to the following:

Kathryn A. Williams, Esq.
Roblin John Williamson, Esq.
WILLIAMSON & WILLIAMS
17253 Agate Street NE
Bainbridge Island, WA 98110
Telephone: (206) 780-4447 Facsimile: (206) 780-5557
Email: Kim@williamslaw.com; Email: roblin@williamslaw.com

Beth E. Terrell, Esq.
Kimberlee L. Gunning, Esq.
Terrell Marshall Daudt & Willie
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Seattle, Washington 98103
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Email: bterrell@tmdwlaw.com; Email: kgunning@tmdwlaw.com
Counsel for Plaintiff and Proposed Class

DATED this 9th day of November, 2012.

s/William I. Aloe, WSBA #40906
Randy J. Aliment, WSBA #11440
William I. Aloe, WSBA #40906
Michael I. White, WSBA #35409
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NOTICE OF REMOVAL - 4

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

Donald Heyrich on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Global Callcenter Solutions, Inc.,

Defendant.

CLASS ACTION

No.

SUMMONS

TO: GLOBAL CALLCENTER SOLUTIONS, INC., Defendant.

A lawsuit has been started against you in the above-entitled Court by the
Plaintiffs. Plaintiffs' claims are stated in the written Complaint, a copy of which is
served upon you with this Summons.

In order to defend against the lawsuit, you must respond to the Complaint by
stating your defense in writing, and serve a copy upon the undersigned attorney for the
Plaintiffs within twenty (20) days after the service of this Summons, or within sixty (60)
days if this Summons was served outside the State of Washington, excluding the day of
service, or a default judgment may be entered against you without notice. A default
judgment is one where the Plaintiffs are entitled to what has been asked for because you

SUMMONS -1

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1 have not responded. If you serve a notice of appearance on the undersigned attorney, you
2 are entitled to notice before a default judgment may be entered.
3

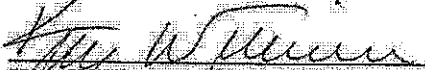
4 You may demand that Plaintiffs file this lawsuit with the court. If you do so,
5 your demand must be in writing and must be served upon the person signing this
6 Summons. Within 14 days after you serve your demand, the Plaintiffs must file this
7 lawsuit with the court, or the service on you of this Summons and Complaint will be
8 void.
9

10 If you wish to seek the advice of an attorney in this matter, you should do so
11 promptly so that your written response, if any, may be served on time.

12 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules
13 of the State of Washington.
14

15 DATED this 3rd day of October, 2012
16

17 WILLIAMSON & WILLIAMS

18 
19 Kim Williams, WSBA #9077
Rob Williamson, WSBA #11387

20 TERRELL MARSHALL DAUDT & WILLIE

21 Beth E. Terrell, WSBA #26759
22 Kimberlee L. Gunning, WSBA #35366

23 *Attorneys for Plaintiff and the Proposed Class*
24
25
26

SUMMONS -2

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

Donald Heyrich on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Global Callcenter Solutions, Inc.,

Defendant.

Case No.

CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF

Plaintiff Donald Heyrich, individually and as class representative for a class of similarly
situated individuals, alleges as follows:

I. PARTIES, JURISDICTION, VENUE

1.1. Defendant Global Callcenter Solutions, Inc. ("GCS") is a Colorado corporation
with its principal place of business in Pueblo, Colorado. GCS does business in the State of
Washington and throughout the United States.

1.2. Plaintiff Donald Heyrich is an individual who resides in King County,
Washington. Plaintiff receives calls on a cellular phone, including that call which is the subject
of this Complaint.

1.3. The call in question was received on Plaintiff's cell phone in King County,
Washington.

COMPLAINT FOR DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF - 1

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1.4. Venue and Jurisdiction are proper under RCW 4.12.020, RCW 2.08.010, and Washington Constitution Article. 4, §6.

II. FACTS

2.1. Plaintiff's cellular telephone number has been listed on the national Do-Not-Call registry since 2007.

2.2. On several occasions within twelve months before August 29, 2012, Plaintiff Heyrich saw calls coming in on his cellular telephone caller identification panel from the telephone number (719) 546-6354, but he did not answer the calls, nor did the caller leave a message.

2.3. Upon information and belief, the telephone number (719) 546-6354 is registered to GCS.

2.4. On August 29, 2012, at 12:59 p.m., Plaintiff received another call on his cellular telephone from the same number, (719) 546-6354, and answered the call. When he answered the call, there was a long pause and, eventually, a sales representative came on the line and tried to upsell Plaintiff, who is a Comcast customer, faster internet service from Comcast. The caller identified herself as being from "GCS-a sales partner for Comcast" or words to that effect.

2.5. Plaintiff Heyrich asked the caller where she was calling from and she confirmed she was calling from GCS. When Plaintiff asked her how she dialed his cell phone number, the caller said it was all computer driven and no manual dialing was involved in placement of the call.

2.6 Pursuant to 47 U.S.C. § 227(a), the Telephone Consumer Protection Act, an "automatic telephone dialing system" ("ATDS") is "equipment which has the capacity to store or

1 produce telephone numbers to be called, using a random or sequential number generator; and to
2 dial such numbers.

3 2.7. Upon information and belief, the call was made by GCS using a form of ATDS")
4 called a predictive dialer which calls telephone numbers and, if there is an answer, after a pause,
5 the call is connected to a live sales agent. In the case of Plaintiff, GCS's agent sought to induce
6 Plaintiff to purchase faster internet service from Comcast.
7

8 2.8. Upon information and belief, GCS placed more than 100 substantially similar
9 telephone calls to persons in Washington State, including those in King County, and throughout
10 the United States.

11 2.9. Upon information and belief, based on its past conduct, GCS intends to continue
12 to make such calls to telephones of persons in Washington State and the United States.
13

14 III. CAUSES OF ACTION

15 3.1. Plaintiff realleges the foregoing paragraphs as if fully stated herein. The
16 following causes of action are, to the extent necessary, stated in the alternative.

17 Count A. Violation of 47 U.S.C. 227 § (b)(1)(A)(iii)

18 3.2. In placing ATDS calls to Plaintiff's cellular telephone line without prior express
19 consent, GCS has violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

20 3.3 GCS's violations of the TCPA are willful and/or knowing.

21 3.3. GCS's violations of 47 U.S.C. § 227(b)(1)(A)(iii) entitle Plaintiff and members of
22 the related National Class I to damages pursuant to 47 U.S.C § 227(b)(3). Under 47 U.S.C.
23 § 227(b)(3)(A), Plaintiff and all members of said Class are entitled to injunctive relief enjoining
24 GCS's unlawful conduct, as well as statutory damages for each of GCS's violations of the law,
25 pursuant to 47 U.S.C. § 227(b)(3)(B). Plaintiff and all members of said Class are also entitled to
26

1 treble damages for GCS's willful or knowing violations of the law, pursuant to 47 U.S.C.
 2 § 227 (b)(3).

3 **Count B. Violation of 47 C.F.R. § 64.1200 *et seq***

4 3.4. GCS has violated 47 C.F.R. § 64.1200 *et seq* by placing solicitation calls to
 5 Plaintiff Heyrich when Plaintiff's telephone number was on the National Do-Not-Call registry.
 6 Violations include violating 47 C.F.R. § 64.1200 (c)(2) which prohibits such calls to telephone
 7 subscribers who have registered their numbers "...on the national do-not-call registry of persons
 8 who do not wish to receive telephone solicitations that is maintained by the federal
 9 government...."

10 3.5. GCS's violations of the TCPA are willful and/or knowing.

11 3.6. 47 U.S.C § 227(c) (5) provides that Plaintiff and members of the related National
 12 Class II who received more than one telephone call in any 12-month period in violation of the
 13 Do-Not-Call provisions of 47 C.F.R. § 64.1200 are entitled to damages. Under 47 U.S.C.
 14 § 227(c)(5)(A), Plaintiff and all members of said Class are entitled to injunctive relief enjoining
 15 GCS's unlawful conduct, as well as statutory damages for each of GCS's violations of the law,
 16 pursuant to 47 U.S.C. § 227(c)(5)(B). Plaintiff and all members of said Class are also entitled to
 17 treble damages for GCS's willful or knowing violations of the law, pursuant to 47 U.S.C.
 18 § 227(c)(5).

19 **IV. CLASS ACTION ALLEGATIONS**

20 4.1. Plaintiff realleges the foregoing paragraphs as if fully stated herein.

21 4.2. This class action is brought and may be maintained pursuant to CR 23(b)(2) and
 22 (b)(3). Plaintiff seeks to represent two Classes comprised of:

All persons who received a telephone call on their cellular telephone from GCS sent by an automatic telephone dialing system for commercial solicitation purposes, at any time for the period that begins 4 years from the date of this complaint to trial (National Class I);

and

All persons whose cellular telephone numbers were on the National Do-Not-Call Registry who received more than one telephone call from GCS for commercial solicitation purposes in any-12 month period, at any time for the period that begins 4 years from the date of this complaint to trial (National Class II).

Excluded from the Classes are GCS and any entities in which GCS has a controlling interest, GCS's agents and employees, the Judge to whom this action is assigned and any members of the Judge's staff and immediate family.

4.3. Numerosity. The Classes are so numerous that joinder of all members is impracticable. Upon information and belief, the Classes exceed 100 in number.

4.4. Common Questions of Law and Fact. The questions of law and fact are the same for all Class members, including whether GCS's conduct violated the TCPA as to Plaintiff and all other Class members.

4.5. The Plaintiff's Claims are Typical of the Class. Plaintiff's claims are typical of the Classes in that they arise from GCS's repeated violation of the TCPA as to Plaintiff and all other Class members.

4.6. The Plaintiff Will Fairly and Adequately Protect the Classes. Plaintiff will adequately represent and protect the interests of the Classes because he has retained competent and experienced counsel and his interests in the litigation are not antagonistic to the other members of the Classes.

4.7. A Class Action is Maintainable Under CR 23(b)(3). The questions of law and fact common to all members of the Classes predominate over questions affecting only individual

COMPLAINT FOR DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF - 5

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members of the Classes, because all members of the Classes were subjected to GCS's unlawful use of one or more ATDSs. The prosecution of separate actions by individual members of the Classes against GCS would create the risk of inconsistent or varying adjudications and incompatible standards of treatment. On information and belief, there are no other pending class actions concerning these issues. A class action is superior to any other available means for the adjudication of this controversy. This action will cause an orderly and expeditious administration of the Classes' claims; economies of time, effort and expense will be fostered; and uniformity of decisions will be ensured at the lowest cost and with the least expenditure of judicial resources.

4.8. A Class Action is Maintainable Under CR 23(b)(2). GCS has acted on grounds generally applicable to Plaintiff and the Classes as alleged herein, thereby making appropriate injunctive and declaratory relief, as well as incidental damages, with respect to the Classes as a whole.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, on behalf of himself and the Classes of similarly situated individuals and entities, respectfully requests that the Court enter judgment in his favor and in favor of the Classes for:

- A. Certification of the Classes pursuant to CR 23(b)(2) and CR 23(b)(3);
- B. Granting declaratory, equitable, and/or injunctive relief as permitted by law to ensure that GCS will not continue to use automatic telephone dialing systems to call persons on their cellular telephones for commercial solicitation purposes;
- C. Judgment against GCS for incidental statutory damages of not less than \$500.00 per call made to Plaintiff and each member of the National Class I, and not less

1 than \$500.00 per call made to Plaintiff and each member of National Class II,
2 and other damages as are permitted by law, including treble damages as provided
3 by statute for GCS's willful and/or knowing violations of the TCPA;
4

5 D. Judgment against GCS for attorney's fees and costs as permitted by law;

6 E. Any other or further relief which the Court deems fair and equitable.

7 DATED : October 3, 2012

8 WILLIAMSON & WILLIAMS

9 By *Kim Williams*

10 Kim Williams, WSBA #9077

11 Rob Williamson, WSBA #11387

12 TERRELL MARSHALL DAUDT & WILLIE

13 Beth E. Terrell, WSBA #26759

14 Kimberlee L. Gunning, WSBA #35366

15 *Attorneys for Plaintiff and the Proposed*
16 *Class*

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COMPLAINT FOR DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF - 7

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SUPERIOR COURT FOR KING COUNTY
STATE OF WASHINGTON

DONALD HEYRICH, ON BEHALF OF
HIMSELF, AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

GLOBAL CALLCENTER SOLUTIONS, INC.,

Defendant.

NO.

NOTICE OF FILING OF REMOVAL

**TO: THE CIVIL CLERK OF THE COURT, SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR KING COUNTY**

PLEASE TAKE NOTICE that on November 9, 2012, Defendant Global Callcenter Solutions, Inc. ("GCS"), by counsel, filed a Notice of Removal of this action in the United States District Court for the Western District of Washington, Seattle Division. A true and correct copy of the Notice of Removal is attached hereto as **Exhibit A**. This Notice has been served upon Plaintiff in compliance with 28 U.S.C. § 1446.

PLEASE TAKE FURTHER NOTICE that the filing of such Notice of Removal in the United States District Court for the Western District of Washington and the filing of this

NOTICE OF FILING OF REMOVAL - 1

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ATTACHMENT B - 1

1 Notice with the Civil Clerk of the Superior Court of State of Washington for King County
2 effect the removal of this action. Pursuant to 28 U.S.C. § 1446(d), the above-captioned action
3 may proceed no further unless and until the case is remanded.

4 DATED this 9th day of November, 2012.

6 s/William I. Aloe, WSBA #40906
7 Randy J. Aliment, WSBA #11440
8 William I. Aloe, WSBA #40906
9 Michael I. White, WSBA #35409
10 Attorneys for Defendant
11 WILLIAMS, KASTNER & GIBBS PLLC
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17 waloe@williamskastner.com
18 mwhite@williamskastner.com

21 NOTICE OF FILING OF REMOVAL - 2

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601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-66001

25 3541278.1

CERTIFICATE OF SERVICE

I, William I. Aloe, say:

On November 9, 2012, I electronically filed the foregoing with the U.S. District Court, Western District of Washington, Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants.

Additionally, a copy of the foregoing has been sent out via electronic mail, via facsimile, via regular U.S. Mail, and via Legal Messenger to the following:

Kathryn A. Williams, Esq.
Roblin John Williamson, Esq.
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Counsel for Plaintiff and Proposed Class

DATED this 9th day of November, 2012.

s/William I. Aloe, WSBA #40906
Randy J. Aliment, WSBA #11440
William I. Aloe, WSBA #40906
Michael I. White, WSBA #35409
Attorneys for Defendant
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NOTICE OF FILING OF REMOVAL - 3

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